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NSTAR Gas Company

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*Via Hand Delivery*

February 4, 2003

Denise L. Desautels  
Selma Urman  
Presiding Officers  
Energy Facilities Siting Board  
One South Station  
Boston, MA 02110

Re: Final Order Opening Rulemaking, EFSB 02-RM-2  
Comments of NSTAR Gas Company

Dear Presiding Officers Desautels and Urman:

NSTAR Gas Company ("NSTAR Gas") is pleased to file the enclosed comments on the proposed regulations of the Energy Facilities Siting Board ("Siting Board") in the above referenced proceeding. Please note that NSTAR Gas also filed these comments electronically today in accordance with the Siting Board's Final Order Opening Rulemaking, issued on December 20, 2002.

NSTAR Gas plans to attend the public hearing in this matter to be held at the offices of the Department of Telecommunications and Energy on February 18, 2003.

If you should have any questions concerning the enclosed comments or require additional information, please feel free contact the undersigned. Please date stamp the additional copy of this cover letter supplied with the filing and return that copy to our messenger.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink that reads "Mary E. Grover". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Mary E. Grover  
Assistant General Counsel

Enclosure

**COMMONWEALTH OF MASSACHUSETTS**

**ENERGY FACILITIES SITING BOARD**

Final Order Opening Rulemaking

EFSB 02-RM-2

**COMMENTS OF NSTAR GAS COMPANY**

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Dated: February 4, 2003

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**COMMONWEALTH OF MASSACHUSETTS**  
**ENERGY FACILITIES SITING BOARD**

Final Order Opening Rulemaking

EF SB 02-RM-2

**COMMENTS OF NSTAR GAS COMPANY**

**I. INTRODUCTION**

In accordance with the Final Order Opening Rulemaking (the "Rulemaking") issued by the Energy Facilities Siting Board (the "Siting Board") on December 20, 2002, NSTAR Gas Company ("NSTAR Gas" or the "Company") hereby submits comments to address two general issues regarding the Siting Board's Rulemaking for which the Siting Board seeks input: (1) the length, pressure and time-interval thresholds in 980 C.M.R. § 15.01(2)(proposed); and (2) the extent to which the new regulations would change the number or type of gas pipeline petitions submitted to the Siting Board for review.

As discussed below, the Company's comments focus on the effect that the Rulemaking will have on public policy issues such as cost, reliability, economic development, and environmental considerations, as well as the Company's perspective on the need to balance these considerations with the important goals outlined by the Siting Board that are intended to be addressed by the Rulemaking.

**II. GENERAL COMMENTS**

In opening the Rulemaking, the Siting Board stated that its current regulations regarding the siting of gas pipelines: (1) are difficult to use as guidance when constructing a natural gas pipeline in Massachusetts because they are interwoven with forecast filing requirements; and (2) provide little guidance to applicants regarding the

Siting Board's procedures for reviewing petitions. See Rulemaking at 4-5. To address these and other issues in its existing regulations, the Siting Board proposes to adopt 980 C.M.R. §§ 15.00 et seq. ("Section 15"), which aim to establish the Siting Board's jurisdiction over: (i) pipelines with a Maximum Allowable Operating Pressure ("MAOP") above 150 pounds per square inch gauge ("psig"); and (ii) contiguous pipeline segments constructed over a five-year period.<sup>1</sup> Section 15 also includes new provisions governing the definition of a "replacement" pipeline project and the opportunity to include route variations in the preferred and alternative route analyses.

The Company supports the Siting Board's efforts to clarify its jurisdiction over the construction of gas pipelines by specifically delineating projects that would be considered jurisdictional to the Siting Board. NSTAR Gas also supports the efforts of the Siting Board to amend its procedural rules governing the siting of jurisdictional gas pipelines so that the Siting Board's requirements for the review and approval of the construction of gas pipelines are clear and instructive. However, in some instances, the Siting Board's proposed regulations may impermissibly extend, or run counter to, the Siting Board's mandate, as reflected in its enabling statute, G.L. c. 164, §§ 69G-S, which is to ensure a reliable energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost. G.L. c. 164, § 69H.

Specifically, the Siting Board's proposed rules would extend its jurisdiction to local distribution company gas-pipeline construction projects with normal operating

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<sup>1</sup> The Siting Board's proposed regulations in Section 15 also attempt explicitly to extend the Siting Board's jurisdiction to gas-pipeline facilities proposed by interstate pipeline companies, large gas customers or other market participants, even in cases where the proposed facilities are within the jurisdiction of the Federal Energy Regulatory Commission ("FERC"). Because these issues pertain to the construction of gas pipelines that generally fall within federal jurisdiction, NSTAR Gas provides no comments on these issues.

pressures below the statutory threshold, which is contrary to the Siting Board's enabling statute, and to relay projects that have a minimal or non-existent impact on environmental issues, and therefore, do not warrant full Siting Board review. In addition, the proposed changes to the Siting Board's regulations will create unnecessary and unwarranted barriers to the development of gas distribution infrastructure facilities by increasing both project lead times and the overall construction costs, which will ultimately be borne by customers. Because the creation of barriers to the construction of new gas pipelines will adversely affect important public policies such as economic development and service reliability, the Company's responses to the specific questions posed by the Siting Board attempt to offer proposals that would better maintain the balance between the goals of the Rulemaking with the public policy considerations noted above.

### **III. COMMENTS ADDRESSING SITING BOARD QUESTIONS**

The Siting Board states in its Rulemaking that it seeks specific comments on several issues relating to its proposed regulations. Of the seven issues for which the Siting Board seeks comment, three will have a direct effect on the Company and other local gas distribution companies ("LDCs") operating in the Commonwealth: (1) the length, pressure, and time-interval thresholds identified for establishing Siting Board jurisdiction; (2) the required contents of a petition; and (3) the opportunity to propose route variations as alternatives for short segments of an overall route. With respect to the latter two topics, NSTAR Gas believes that the proposed regulations provide helpful guidance to companies petitioning the Siting Board for approval to construct a gas pipeline. In particular, the Siting Board's proposal to allow project proponents to include route variations in a petition and project notice (see 980 C.M.R. §§ 15.02, 15.03 (1) and

(5)(proposed)) will facilitate the Siting Board's review of jurisdictional projects by allowing project proponents to address possible contingencies affecting a proposed (and alternative) route for a project and will allow project proponents to provide sufficient notice to route abutters regarding such possible route variations. With regard to the Siting Board's proposed regulations governing the length, pressure and time-interval thresholds that would trigger the Siting Board's jurisdiction over certain gas pipeline projects, NSTAR Gas provides more detailed comments, as discussed below.

As an initial matter, however, it should be noted that the Siting Board's jurisdiction over the construction of new gas pipelines has remained virtually unchanged since 1974. See Chapter 852 of the Acts of 1974, § 2. With regard to gas pipelines, the Siting Board has jurisdiction over the construction of:

a new pipeline for the transmission of gas having a normal operating pressure in excess of 100 pounds per square inch gauge ("psig") which is greater than one mile in length except restructuring, rebuilding, or relaying of existing transmission lines of the same capacity.

G.L. c. 164, § 69G (definition of "facility").<sup>2</sup> Accordingly, the Siting Board's jurisdiction over the construction of gas pipelines is limited by statute to: (1) a "new" pipeline; (2) having a "normal operating pressure" in excess of 100 psig; that is (3) greater than one mile in length. In addition, the definition of facility specifically exempts from Siting Board review projects to restructure, rebuild or relay existing transmission pipelines "of the same capacity." Id.

When read in the context of the Siting Board's overall statutory mandate, i.e., to ensure a reliable energy supply for the Commonwealth with a minimum impact on the

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<sup>2</sup> This language was last amended by Chapter 164 of the Acts of 1997 (the "Electric Restructuring Act"). St. 1997, c. 164, §§ 200-203. However, the only difference between this language and that

environment at the lowest possible cost, the language of this statutory provision is precise in that it focuses the Siting Board's jurisdiction on significant construction projects that have potential environmental impacts that must be balanced with cost considerations.<sup>3</sup> This is an important point because, taken in combination, the Siting Board's proposed regulations would have the effect of extending Siting Board jurisdiction to construction projects that are either below the statutory threshold for operating pressure or are designed to upgrade existing gas distribution lines, and therefore, have little or no impact on the environment. Moreover, there are essentially no alternatives to these projects that could be considered by the Siting Board in terms of the relay or replacement of pipe. Accordingly, these projects do not lie within the proper ambit of Siting Board jurisdiction. As discussed herein, the Siting Board should not extend its jurisdiction to construction projects that do not fall squarely within the plain meaning of the statute and that, if reviewed by the Siting Board, would raise no significant issues for its consideration.

**A. The Siting Board's Proposed Regulations Will Significantly Increase the Number and Type of Gas Pipelines Projects That Must Be Submitted to the Siting Board for Review.**

As noted above, G.L. c. 164, § 69G defines a jurisdictional facility, in relevant part, as a "*new pipeline for the transmission of gas having a normal operating pressure in excess of 100 [psig] which is greater than one mile in length except restructuring,*

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originally passed in 1974 is that from 1974 to 1997, the phrase began with the words "any new pipeline..." rather than "a new pipeline..."

<sup>3</sup> Regulations promulgated by the Siting Board must be consistent with the Siting Board's mandate requiring it to ensure a reliable energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost. See *City of New Bedford v. Energy Facilities Siting Council*, 413 Mass. 482 (1992) (Supreme Judicial Court rejected an interpretation by the Siting Board that was inconsistent with the clear statutory mandate).



rebuilding, or relaying of existing transmission lines *of the same capacity.*” G.L. c. 164, § 69G (definition of “facility,” [emphasis added]). Section 15 attempts to clarify the scope of the Siting Board’s jurisdiction pursuant to this definition in four significant ways.

First, Section 15 defines “normal operating pressure” as “the maximum pressure that would be expected in the pipeline based on the configuration of compressors and pressure regulators” and further states that “[a]ny pipeline with a maximum allowable operating pressure in excess of 150 psig will be treated as having a normal operating pressure in excess of 100 psig.” 980 C.M.R. § 15.02(proposed). Second, Section 15 includes a new “scope” section that states that:

an application must be filed under [Section 15] whenever any person proposes to construct a gas transmission pipeline with a normal operating pressure in excess of 100 psig, when the total length of new gas pipeline will exceed one mile.

(980 C.M.R. § 15.01(2)(proposed) (emphasis added)). Under the Siting Board’s proposed regulations, the total length would be computed to include adjacent lengths of gas pipeline constructed within the five preceding years to the extent that those lengths met the pressure threshold. Third, Section 15 expands on the statute’s reference to “rebuilding, restructuring or relaying” of “existing transmission lines” by introducing the term “replacement pipe” and defining it as “any lengths of restructured, rebuilt or relaid pipe that are of the same nominal diameter and design pressure and are also within the same right-of-way as the replaced pipe.” 980 C.M.R. § 15.01(2)(b)(proposed).

In addition to these new regulations, the Siting Board’s proposed regulations would supersede existing regulations at 980 C.M.R. § 7.07(8) which, in part, exempt from Siting Board review: (1) the upgrading of an existing pipeline, which has been in

existence for at least 24 months and which is capable of operating at pressures in excess of 100 psig; and (2) the construction of certain pipelines that for the first two years of service will be used at a pressure of less than 100 psig or that involve the rebuilding, relaying, minor relocation, or restructuring of all or part of an existing line that traverses essentially the same route.

Each of these proposed changes would significantly and unnecessarily expand the Siting Board's jurisdiction over the construction of gas pipelines to the detriment of the Company's system improvement and expansion efforts and to the detriment of customers who ultimately will bear the increased construction costs. These detrimental effects are unnecessary, particularly in instances where there is an existing pipe and any upgrades installed by the Company would cause minimal or no environmental impacts. In such cases, the pipeline upgrades would further, rather than violate, the Siting Board's mandate to maintain a reliable energy supply for the Commonwealth.

Customers may also be directly affected as a result of the expanded jurisdiction by the Siting Board. For example, in instances where a new or existing commercial or industrial customer is deciding whether to site new or expanded operations in Massachusetts or other states, the customer must compare the cost and length of time it may take for the Company to construct (or upgrade) a gas pipeline with those same factors in other states competing for such customer's business. To the extent that the Siting Board unnecessarily brings smaller pipeline projects under its jurisdiction and subjects them to lengthy review, it may have the unintentional effect of either stunting business development or driving businesses out of the Commonwealth altogether. Accordingly, NSTAR Gas recommends revising the proposed regulations as discussed

below.

1. The Siting Board's Proposal to Define "Normal Operating Pressure" in Terms of an MAOP Is Arbitrary and Not Consistent with the Plain Language of the Statute.

In the Rulemaking, the Siting Board proposes to define "normal operating pressure" as:

the "maximum pressure that would be expected in the pipeline based on the configuration of compressors and pressure regulators. Any pipeline with an MAOP in excess of 150 psig will be treated as having a normal operating pressure in excess of 100 psig.

980 C.M.R. 15.02(proposed). Of all of the Siting Board's proposed regulations, this is the most problematic from the Company's perspective because the adoption of this definition would effectively override the plain language of the statute, which states precisely that the Siting Board has jurisdiction over pipelines with a normal operating pressure greater than 100 psig (and over one mile in length).<sup>4</sup>

When the Company installs new pipe or relays an existing pipe with distribution main in locations on the system between the take station on the interstate pipeline and the district regulators, it routinely rates those mains at 275 psig at the time of installation, unless those mains are feeding into a well-developed area of the system in which plastic mains are in use.<sup>5</sup> This is because the fittings, valves and other components used in the

<sup>4</sup> The Siting Board must not ignore its governing statute and create new jurisdiction that is devoid of statutory support. See City of New Bedford, supra. If the Legislature had intended that the Siting Board evaluate gas pipelines with a normal operating pressure of less than 100 psig, it would have drafted G.L. c. 164, § 69G accordingly. Because it did not, the Siting Board cannot go beyond the plain meaning of the language in that section or its mandate in promulgating regulations governing the siting of gas pipelines. See Massachusetts Hospital Association v. Department of Medical Security, 412 Mass. 340 (1992); see also Plymouth County Nuclear Information Committee, Inc. v. Energy Facilities Siting Council, 374 Mass. 236, at 239-240 (1978) (finding that the Siting Board's jurisdiction over facilities is proscribed by the plain language in its enabling statute).

<sup>5</sup> Currently, plastic mains cannot be operated at an MAOP that exceeds 60 psig, and generally plastic mains are operated at a pressure much less than 60 psig. Therefore, plastic mains do not fall into the category of mains that could potentially become subject to Siting Board jurisdiction.

pipng system are designed to meet American National Standards Institute (“ANSI”) 150 standards, and, therefore, are capable of an MAOP of 275 psig. Although the Company has the choice of rating a new pipe to an MAOP that is less than 275 psig (or even less than 150 psig), the pipeline must be rated to its maximum potential at the time of installation because, in order to rate the pipe at a later date, the pipe has to be shut down, isolated from the system, and pressure tested, which is extremely disruptive to customers and expensive to complete once the system goes into operation. Since, unlike an electric distribution system, the gas distribution system has no redundancy (*i.e.*, no ability to loop power to homes and businesses through multiple paths), there is no way to avoid shutting down gas service to customers to complete this time and labor-intensive process.<sup>6</sup> This would create an untenable situation for the Company given the ramifications for customers.

A significant portion of the mains that the Company installs or relays as part of the distribution network between the interstate pipeline take stations and the district regulators (other than the small amount that feed into areas encompassing plastic mains) is operated at a normal operating pressure of 60 psig and may never be operated at a normal operating pressure greater than 100 psig. Because it is necessary for the Company to rate these mains to an MAOP of 275 psig at the time of installation in order to avoid the significant cost, inconvenience and potential economic harm to customers that would result from an attempt to rate the pipeline subsequent to its installation, the Siting Board’s proposal to define “normal operating pressure” with reference to an MAOP of 150 psig, effectively rewrites the statute to provide the Siting Board with

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<sup>6</sup> Depending on the length of the pipeline, this process could take anywhere from three days to two weeks.

jurisdiction over pipelines with a normal operating pressure less than 100 psig. As a result, this proposal directly contravenes the plain language of the Siting Board's enabling statute.

Moreover, this proposal, in combination with the Siting Board's proposal to consider contiguous lengths constructed within a five-year period, will have the effect of causing the natural gas local distribution companies to require Siting Board approval of a significant number of smaller construction and relay projects that would not have required Siting Board approval in the past. As discussed below, the realities of the system-planning and budgeting processes often dictate that pipeline expansion and relay projects are accomplished over multi-year periods and in phases. The bulk of these expansion and relay projects involves pipelines with normal operating pressures less than 100 psig, and therefore, the combination of the newly defined "normal operating pressure" and the proposed "segmentation" rule will have a substantial impact on the Company's ability to expand and upgrade the distribution system to the benefit of customers.

In addition, the proposal to tie the definition of "normal operating pressure" to an MAOP of 150 psig or greater appears to be an arbitrary cutoff with no relevance to a gas company's operational procedures. As stated above, the type of projects that would be most directly affected by the Siting Board's proposed rules generally involves the installation or relay of main with normal operating pressures of 60 psig or greater. Any main that is installed or relayed with a normal operating pressure of 60 psig or greater is typically rated by the Company to an MAOP of 275 psig because the component facilities are designed to an MAOP of 275 psig and the testing to rate the facilities is best

performed prior to coming on line to serve customers. Although the Company has the option of not rating the facility to its MAOP at the time of construction, it is not reasonable or practical to do so. Therefore, establishing a threshold MAOP of 150 psig has no operational meaning to the Company and the proposal to create this threshold effectively and arbitrarily subjects all pipeline construction or relay projects with normal operating pressures of 60 psig or greater to Siting Board review (where these projects also exceed one mile in length over a five-year period).

NSTAR Gas believes that the Siting Board's proposal to reference an MAOP of 150 psig in the definition of "normal operating pressure" in 980 C.M.R. § 15.02 (proposed) is not consistent with the plain terms of the statute, and therefore, would result in an inappropriate extension of jurisdiction over new pipelines with a "normal operating pressure" under 100 psig.<sup>7</sup> From the Company's perspective, the issue is not so much the need for a clarification of the definition of "normal operating pressure;" the use of this term in the statute is clear and unambiguous. Rather, the issue appears to be that the Siting Board is concerned that its review process could be circumvented where a pipeline is constructed and operated for some period of time at a normal operating pressure of less than 100 psig, but in the future could be operated at a normal operating pressure of 100 psig or greater because the MAOP established at the time of construction exceeded 100 psig. The Siting Board's efforts, therefore, should be directed at identifying and addressing those types of situations rather than subjecting construction of pipelines with normal operating pressures of 60 psig (and lengths in excess of one mile over a five-year

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<sup>7</sup> "An administrative agency has no authority to promulgate rules and regulations that conflict with the statutes or exceed the authority conferred by the statutes by which the agency was created." Massachusetts Municipal Wholesale Electric Company v. Energy Facilities Siting Council, 411 Mass. 183, 194 (1991).

period) to Siting Board review and approval, which is a costly and time-consuming proposition that has the potential to chill infrastructure development.

To the extent that there is a need to define “normal operating pressure” in the Rulemaking, it could be defined as:

the ~~maximum~~ pressure that would be expected in the pipeline based on the configuration of compressors and pressure regulators. ~~Any pipeline with an MAOP in excess of 150 psig will be treated as having a normal operating pressure in excess of 100 psig.~~

In addition, rather than linking the definition to an MAOP, the Siting Board could establish a process that would require LDCs: (1) to notify the Siting Board on an annual basis of any planned LDC pipeline projects within the next five years having a total length in excess of 5,000 feet; and (2) to certify that the associated “normal operating pressure,” is less than 100 psig (for those facilities that are not being submitted to the Siting Board for approval). This requirement is similar to that currently imposed on the LDCs by the Pipeline Engineering and Safety Department of the Department of Telecommunications and Energy. This process would allow the Siting Board to be routinely notified of the construction of significant, but non-jurisdictional, pipelines without subjecting such pipelines to full Siting Board review.

In addition, if and when an LDC determines that the normal operating pressure needs to be raised to exceed 100 psig and can no longer certify that it would operate at 100 psig or less, the Siting Board could review the need, cost and environmental impact of such an increase on an expedited basis. NSTAR Gas suggests that such an expedited review could be performed within 90 days from the filing of notice by a company that it would like to operate an existing pipeline at pressures of greater than 100 psig. Such an expedited review should not require a project proponent to perform a site-selection

analysis, a route-alternatives analysis or a need analysis of the same scope as is necessary for new pipelines along new rights-of-way. Rather, the need analysis should consist of information justifying a company's request to operate a pipeline at such greater pressure (e.g., to serve the business needs of a customer that wishes to expand its operations) and include analyses of cost and environmental impact. To the extent that a company cannot demonstrate that there is a specific need to serve customers by increasing the pressure of an existing pipeline, and that increasing such pressure is at least cost and minimizes environmental impacts, the Siting Board could deny the company's request.

A similar expedited review could be performed to the extent that a company wished to relay or upgrade an existing pipeline with a new pipeline of increased diameter or nominal pressure, as discussed below. These alternatives to the Siting Board's proposed "normal operating pressure" definition would balance the public policy goals of reducing customer cost, increasing service reliability and promoting economic development with the Siting Board's goal of having more effective oversight over the construction of gas pipelines.

2. The Proposed Regulations Should Not Supersede the Provisions of 980 C.M.R. 7.07(8).

The Siting Board's proposed regulations would supersede its current regulation at 980 C.M.R. § 7.07(8), which exempts from Siting Board review: (1) the upgrading of an existing pipeline, which has been in existence for at least 24 months and which is capable of operating at pressures in excess of 100 psig; and (2) the construction of a pipeline that for the first two years of service will be used at a pressure of less than 100 psig or which involve the rebuilding, relaying, minor relocation, or restructuring of all or part of an existing line that traverses essentially the same route. The Siting Board should not render



these exemptions inoperative because these exemptions accommodate the practical operating considerations of the gas distribution system. Moreover, the elimination of these exemptions will needlessly increase the costs and lead time of infrastructure projects without furthering system reliability or environmental interests.

The Company, like other LDCs, identifies and plans for system improvement and expansion projects over a long-term horizon, based on projections of future load growth, although construction plans are only generally prepared on a year-to-year basis based on budget and operational constraints. For NSTAR Gas, approximately 50 percent of these projects represent new pipeline and 50 percent represent relay of existing pipes. Approximately 95 percent of these projects are located under streets in the cities and towns in which the Company operates and do not require the Company to traverse a "right-of-way." As a result, the environmental impacts associated with the vast majority of the Company's construction projects are minimized. The Siting Board's existing exemptions recognize that, at least in cases where an existing pipeline is being upgraded or the project involves the rebuilding, relaying, minor relocation, or restructuring of all or part of an existing line traversing essentially the same route, the benefit to be gained by undergoing a full Siting Board review does not outweigh the cost and time required to conduct such a review. In turn, this approach promotes infrastructure development because it provides the Company, and other LDCs, with the flexibility to pursue system improvement projects without the cost and project lead times required when a project is jurisdictional to the Siting Board.

In particular, any disincentive to upgrade existing pipelines that are more than two years old should be closely reviewed. NSTAR Gas, like other LDCs, prospectively

analyzes whether a pipeline upgrade would improve system reliability in the future, even if no immediate reliability issues have arisen with regard to such pipeline. When the Company has the opportunity to relay an existing pipe (because the streets are opened), it is the Company's standard practice to replace the pipe with that of a larger thickness and/or diameter so that the pipe will not need to be replaced at a later date requiring additional construction costs and the inconvenience of another opening of the street.<sup>8</sup> Performing this upgrade at the time that the pipe is exposed is a cost-effective approach because once the street is opened, the cost of relaying pipes of a slightly larger diameter is insignificant relative to the total construction costs of the project. Moreover, the installation of the larger diameter pipe poses essentially no incremental environmental impacts, but would provide much greater reliability for customers.

In these cases, the pipeline continues to operate at the same normal operating pressure at least for a period of time, if not permanently. Therefore, eliminating the above-referenced exemptions will impede the upgrading of facilities that are most cost effective when installed at the time that it is necessary to replace older pipeline or at the time that the street is opened for other reasons. Under the Siting Board's proposed regulations, an LDC would have to make a decision to incur significant up-front costs to obtain Siting Board approval of an upgrade project (whether or not the project ever is ultimately constructed) or to put off the upgrades until such time that the need for the upgrade becomes more acute. This choice is unwarranted and fails to further the Siting

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<sup>8</sup> The Company only rarely "replaces" existing pipelines with pipes of the same diameter, because when the opportunity arises to access a pipe under a street opening it is far more cost effective to relay an existing pipe with a larger diameter pipe at the time the street is opened than to return and incur all of the construction costs again in the future.

Board's mandate to, in part, ensure that a reliable energy supply is maintained in the Commonwealth.

The Company recommends that the Siting Board address these issues by implementing various levels of review for projects that involve changes to existing pipelines. First, the Siting Board should retain its proposed "replacement pipe" language in 980 C.M.R. 15.01(2)(b), which specifically exempts from Siting Board review any lengths of restructured, rebuilt or relaid pipe of the same nominal diameter and design pressure, within the same right-of-way as an existing pipe. However, the Siting Board should clarify this provision by explicitly tying its "replacement pipe" language to the definition of "facility" in G.L. c. 164, § 69G, which references "restructuring, rebuilding, or relaying" of existing pipelines, rather than "replacing" such pipelines. Accordingly, to the extent that a company is replacing an existing pipeline with a pipe of the same diameter and nominal operating pressure, such a project would not be jurisdictional to the Siting Board.

For the reasons noted above, this exemption from review should continue to be extended to: (1) the upgrading of an existing pipeline, which has been in existence for at least 24 months and which is capable of operating at pressures in excess of 100 psig; and (2) the construction of a pipeline that for the first two years of service will be used at a pressure of less than 100 psig or which involve the rebuilding, relaying, minor relocation, or restructuring of all or part of an existing line that traverses essentially the same route. However, if some level of review is deemed necessary, the Siting Board should consider reviewing upgrade projects that involve the replacement of existing pipe with pipe of a greater diameter or nominal pressure to receive an expedited Siting Board review, as

discussed supra. Such an expedited review would entail the Siting Board reviewing projects to upgrade existing pipeline within 90 days from the filing of a petition by a company.

This expedited review should not require a project proponent to perform a route alternatives analysis or a need analysis of the same scope as is necessary for new pipelines along new rights-of-way. In any event, neither the construction of “replacement” pipeline nor the upgrading of an existing pipeline should be subject to a full Siting Board review, because such a review over replacement or upgrade projects is unnecessary and may be counter to the Siting Board’s mandate to ensure that energy facilities are constructed that are needed, minimize environmental impacts and are constructed at the lowest possible cost.

**B. The Proposal to Encompass Contiguous Lengths of Pipe Is Overbroad and Will Act as a Barrier to Infrastructure Development.**

The Siting Board is proposing to “clarify” its jurisdiction over pipeline projects that are built in segments by requiring Siting Board approval of “any adjacent lengths of gas pipeline constructed within the five preceding years.” 980 C.M.R. § 15.01(2)(a)(proposed). The Siting Board seeks comment regarding whether the five-year time-span provides a reasonable basis to encompass contiguous construction activities.

A five-year time span for considering segmented pipeline projects is an overly broad approach to a relatively limited issue. As discussed above, the bulk of the Company’s pipeline construction projects represent new or relaid pipelines with normal operating pressures of 60 psig or below. Out of approximately 2,900 miles of NSTAR Gas main, less than 25 miles are composed of main with a normal operating pressure of

100 psig or greater. As a result, the combination of this requirement and the proposed definition of “normal operating pressure,” creates the potential that the amount of regulatory process that the Company will have to engage in before undertaking routine construction and replacement projects will be significantly increased.

NSTAR Gas’ planning process for new pipeline construction encompasses a relatively short period, generally one to two years, whereby the Company plans and budgets for the construction or relay of particular pipeline projects. Because the construction budget is established on a year-to-year basis and system growth is subject to economic trends and other factors outside the Company’s control, it is typical for the annual construction plan to vary significantly from the Company’s overall long-range distribution plan. Under the Siting Board’s proposed rules, a company would have to file for approval of pipeline projects that may never get built or that may vary significantly by the time they are built from the original construction plan or route. This will create substantial and needless costs, which will take away from the funds available for construction and improvement of the system, and that ultimately, will be recovered from customers in rates. At the very least, the Siting Board should shorten the proposed time frame from five years to two years, to be consistent with the way in which projects are planned by the distribution companies.

If it is clear at the outset that the project, once completed over the course of a period of up to two years, will be over one mile in length and operate normally at pressures above 100 psig, then Siting Board approval would be appropriate. A two-year time frame is also consistent with the Siting Board’s regulations at 980 C.M.R. 7.07(8), noted supra, that exempt from Siting Board jurisdiction certain projects that operate at

less than 100 psig for the first two years of operation or that represent upgrades of existing pipelines that are less than two years old.

The Siting Board should not extend the time frame for defining a jurisdictional contiguous pipeline project to periods beyond two years because to do so would result in making jurisdictional pipeline projects that may be contiguous, but only by happenstance, rather than by design or intent. Moreover, if the Siting Board adopts a five-year time-span for making segmented pipeline projects jurisdictional, in some instances the Siting Board may be subjecting to a full review a project that originated over five years earlier, when planning time is taken into consideration. Such a review would be costly and would not be an efficient use of the Siting Board's resources.

As is the case with the Siting Board's proposal to define "normal operating pressure" by reference to an MAOP, it seems that the issue is not so much a clarification of the length of the pipeline that is subject to Siting Board jurisdiction. The Siting Board's enabling statute is clear and unambiguous on that point, i.e., pipelines must be at least a mile in length. Rather, the issue appears to be that the Siting Board is attempting to preclude a situation where its jurisdiction is circumvented through the segmentation of a single construction project. If this is the case, NSTAR Gas believes that the Siting Board should issue a regulation that explicitly prohibits such "segmentation," and rely on the notice procedure outlined above to obtain the information necessary to monitor and detect such activities.<sup>9</sup> Accordingly, NSTAR Gas recommends that the Siting Board should adopt a procedure that would provide it with the information necessary to monitor

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<sup>9</sup> For example, the Siting Board's regulations could prohibit "segmentation" or the disaggregation of a single pipeline project into lengths of less than 5,000 feet, where the Company has identified a need to install a jurisdictional facility and where the Company has a reasonable expectation that the project will be completed as planned and designed within a five-year period.

LDC jurisdictional construction projects, but in any event, adopt no more than a two-year time frame for considering whether a segmented pipeline project meets the Siting Board's jurisdictional threshold.

**C. The Proposed Regulations Are Unclear Regarding Their Applicability to Gas Projects Other Than Pipelines.**

The Siting Board has asked for comments on the clarity of its proposed regulations regarding "the conditions under which a pipeline project is defined as jurisdictional to the Siting Board...." Rulemaking at 10. Although Section 15 explicitly references "gas pipelines," the Rulemaking also alludes to the Siting Board's intention for its proposed regulations to govern gas "facilities" and explicitly references gas facilities in proposed Section 17 regulations governing FERC-approved projects. G.L. c. 164, § 69G defines a jurisdictional "facility" in part, as "a unit, including associated buildings and structures, designed for or capable of the manufacture or storage of gas, except such units below a minimum threshold size as established by regulation." G.L. c. 164, § 69G. As a result, it is unclear whether the Siting Board specifically intends for its proposed Section 15 regulations to govern the construction of facilities other than gas pipelines, such as liquefied natural gas ("LNG") facilities.

The Company recommends that the Siting Board clarify its proposed regulations in Section 15 to specifically limit them to "gas pipelines" rather than leave ambiguous their applicability to other gas "facilities" such as gas storage facilities. The Siting Board's current regulations at 980 C.M.R. §§ 10.00 et seq. are clearly applicable to the siting of LNG facilities, and thus, the Siting Board need not extend the proposed regulations at Section 15 to the construction of such facilities.

#### **IV. CONCLUSION**

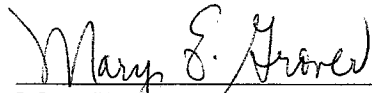
NSTAR Gas appreciates the opportunity to comment on the Siting Board's proposed regulations. NSTAR Gas supports the effort of the Siting Board to clarify its procedural and substantive regulations governing the siting of gas pipelines so that project proponents have a clearer understanding of the Siting Board's requirements for reviewing and approving the construction of gas pipelines. However, in some instances, the Siting Board's proposed regulations run counter to the Siting Board's mandate or adversely affect other important public policy objectives. The Company has offered some proposals to amend the proposed regulations to balance the important goals of the Rulemaking with other public policy goals, and to develop regulations that are fair and equitable for both customers and project proponents. The Company hopes that the Siting Board considers these recommendations and incorporates them into its final regulations governing the construction of gas pipelines.



Respectfully submitted,

**NSTAR GAS COMPANY**

By its attorneys,



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NSTAR Electric & Gas Corporation

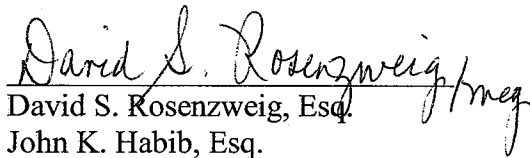
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